

AMENDED IN SENATE JULY 3, 2014
AMENDED IN SENATE JUNE 16, 2014
AMENDED IN ASSEMBLY MAY 1, 2014
AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1738

Introduced by Assembly Member Chau

February 14, 2014

An act to amend Sections 5910 and 5915 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1738, as amended, Chau. Common interest developments: dispute resolution.

The Davis-Stirling Common Interest Development Act defines a common interest development and requires it to be managed by an association. The act requires an association to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an association and a member involving their rights, duties, or liabilities under the act, the Nonprofit Mutual Benefit Corporation Law, or the association's governing documents. The act authorizes an association to develop its own procedure for these purposes and requires this procedure to satisfy specified minimum standards, including, among others, that a resolution of a dispute, pursuant to the procedure, binds the association and is judicially enforceable, and that an agreement, pursuant to the procedure, binds the parties and is judicially enforceable, as specified. The act also

requires that the procedure provide a means by which the member and the association may explain their positions.

This bill would additionally require the resolution or agreement under an association's procedure for resolving these disputes between an association and a member to be in writing *and signed by both parties*. The bill would authorize a member and an association to be assisted by an attorney or another person in explaining their positions at their own cost.

The act also establishes an alternative procedure applicable to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure as described above. Under these provisions a procedure that, among other things, authorizes either party to request, in writing, the other party to meet and confer, prohibits the association from refusing a request to meet and confer, and requires the parties to meet and confer in good faith in an effort to resolve the dispute, is deemed a fair, reasonable, and expeditious dispute resolution procedure. The act provides that an agreement reached under this procedure binds the parties and is judicially enforceable if specified conditions are satisfied.

This bill would additionally require the alternative procedure to provide either party the right to have an attorney or another person participate when meeting and conferring provided at their own cost. ~~This~~ The bill would require an agreement reached under the alternative procedure that binds the parties and is judicially enforceable to be in ~~writing~~, *writing and signed by both parties*, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5910 of the Civil Code is amended to
- 2 read:
- 3 5910. A fair, reasonable, and expeditious dispute resolution
- 4 procedure shall at a minimum satisfy all of the following
- 5 requirements:
- 6 (a) The procedure may be invoked by either party to the dispute.
- 7 A request invoking the procedure shall be in writing.
- 8 (b) The procedure shall provide for prompt deadlines. The
- 9 procedure shall state the maximum time for the association to act
- 10 on a request invoking the procedure.

1 (c) If the procedure is invoked by a member, the association
2 shall participate in the procedure.

3 (d) If the procedure is invoked by the association, the member
4 may elect not to participate in the procedure. If the member
5 participates but the dispute is resolved other than by agreement of
6 the member, the member shall have a right of appeal to the board.

7 (e) A written ~~resolution~~ *resolution, signed by both parties*, of a
8 dispute pursuant to the procedure that is not in conflict with the
9 law or the governing documents binds the association and is
10 judicially enforceable. A written ~~agreement~~ *agreement, signed by*
11 *both parties*, reached pursuant to the procedure that is not in
12 conflict with the law or the governing documents binds the parties
13 and is judicially enforceable.

14 (f) The procedure shall provide a means by which the member
15 and the association may explain their positions. The member and
16 association may be assisted by an attorney or another person in
17 explaining their positions at their own cost.

18 (g) A member of the association shall not be charged a fee to
19 participate in the process.

20 SEC. 2. Section 5915 of the Civil Code is amended to read:

21 5915. (a) This section applies to an association that does not
22 otherwise provide a fair, reasonable, and expeditious dispute
23 resolution procedure. The procedure provided in this section is
24 fair, reasonable, and expeditious, within the meaning of this article.

25 (b) Either party to a dispute within the scope of this article may
26 invoke the following procedure:

27 (1) The party may request the other party to meet and confer in
28 an effort to resolve the dispute. The request shall be in writing.

29 (2) A member of an association may refuse a request to meet
30 and confer. The association may not refuse a request to meet and
31 confer.

32 (3) The board shall designate a director to meet and confer.

33 (4) The parties shall meet promptly at a mutually convenient
34 time and place, explain their positions to each other, and confer
35 in good faith in an effort to resolve the dispute. The parties may
36 be assisted by an attorney or another person at their own cost when
37 conferring.

38 (5) A resolution of the dispute agreed to by the parties shall be
39 memorialized in writing and signed by the parties, including the
40 board designee on behalf of the association.

- 1 (c) A written agreement reached under this section binds the
2 parties and is judicially enforceable if *it is signed by both parties*
3 *and* both of the following conditions are satisfied:
- 4 (1) The agreement is not in conflict with law or the governing
5 documents of the common interest development or association.
- 6 (2) The agreement is either consistent with the authority granted
7 by the board to its designee or the agreement is ratified by the
8 board.
- 9 (d) A member shall not be charged a fee to participate in the
10 process.